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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VENTURA HERNANDEZ-MARQUINA,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-74144

Agency No. A75-464-721

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted February 13, 2006^{**}

Before: FERNANDEZ, RYMER, and BYBEE, Circuit Judges

Ventura Hernandez-Marquina, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' decision dismissing his appeal from an immigration judge's denial of his application for cancellation of removal after

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

his attorney conceded that he had voluntarily departed in 1999 and therefore could not establish ten years of continuous physical presence in the United States, as required under 8 U.S.C. § 1229b(b)(1)(A). *See Vasquez-Lopez v. Ashcroft*, 343 F.3d 961, 974 (9th Cir. 2003) (per curiam). Hernandez-Marquina contends that the Board and the immigration judge denied him due process in failing further to consider his application. This contention lacks merit because the burden of proving his eligibility for cancellation of removal was on Hernandez-Marquina. *See Ramirez-Perez v. Ashcroft*, 336 F.3d 1001, 103 n.3 (9th Cir. 2003).

PETITION FOR REVIEW DENIED